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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,

11 Plaintiff,

12 vs.

13 Michael Lacey, *et al.*,

14 Defendants.
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NO. CR-18-00422-PHX-SMB

**DEFENDANTS' JOINT MOTION FOR
AN ADJOURNMENT OF THE 5/27/19
DISCOVERY DEADLINE**

1 Defendants Michael Lacey, James Larkin, John Brunst, Scott Spear, Andrew Padilla, and
2 Joye Vaught, by and through their undersigned attorneys, respectfully request an adjournment of
3 their May 27, 2019 deadline for disclosure of Rule 26.2 material, which will occur prior to the June
4 1, 2019 status report that this Court ordered the parties to submit on outstanding discovery and how
5 that outstanding discovery impacts the Defendants' remaining pretrial deadlines. It is Defendants'
6 understanding that the Court intends to address *all* remaining deadlines upon receipt of the parties'
7 June 1, 2019 status reports (including Defendants' May 27, 2019 deadline) and this one deadline will
8 occur prior to this Court's consideration of the June 1, 2019 status reports, which is the reason
9 Defendants respectfully seek the adjournment of that deadline at this time.

10 On April 23, 2019, the parties appeared before this Court for a status conference.
11 Defendants raised several issues concerning discovery. One of these issues relates to the
12 Backpage.com servers. The government has forty-six seized servers in its possession and anticipates
13 another approximately sixty servers at some point in time through the MLAT process. Defendants
14 explained that they have received imaged copies of five of Backpage's servers, but have not received
15 any copies or information regarding the contents of the remaining approximately 101 servers the
16 government has seized. Defendants explained that these servers contain exculpatory information
17 and data that is not only material, but also critical to the defense and that a review of this discovery
18 was necessary to formulate and draft Defendants' upcoming case submissions, including witness
19 lists, exhibit lists, substantive motions, and motions *in limine*.

20 The government indicated that it did not intend to provide imaged copies of all of the
21 servers, but that, in any event, the government would not have access to the approximately sixty
22 servers located in Amsterdam until whenever they arrive through the MLAT process.

23 In addition to the server issues, Defendants explained that it would be impossible to comply
24 with the current case deadlines because the government had not yet provided Jencks Act material
25 with respect to some of its witnesses, most notably, its key cooperating witness, former Backpage
26 C.E.O. Carl Ferrer. (Indeed, prior to the status conference, the government sought and obtained
27 an *ex parte* extension of its deadline for disclosing Ferrer's Jencks Act material and such material will
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1 not be disclosed until June 25, 2019, which is just two weeks prior to Defendants' deadline to file
2 substantive motions). The scheduling order setting Defendants' deadlines for discovery, witness
3 lists, exhibit lists, substantive motions, and motions in limine contemplated that the government's
4 discovery would be produced by December 3, 2018 and that its Jencks Act and witness
5 impeachment material would be produced no later than February 25, 2019. (*See* Doc. 131.)

6 Further, Defendants explained that they had been unable to locate and review hundreds of
7 the exhibits the government intends to use at trial within the nearly eleven million pages of discovery
8 provided thus far because those exhibits were not identified by Bates numbers and it is impossible
9 to search for those exhibits without Bates numbers. The government indicated that it would provide
10 Defendants with the Bates numbers for each exhibit, but has not yet done so.

11 Finally, as Defendants have raised with the Court on numerous occasions, they are without
12 the funds necessary to wage a proper and complete defense to the instant charges. Among other
13 problems, Defendants do not have the funds to retain a vendor to host the discovery disclosed thus
14 far on the Relativity platform, meaning Defendants cannot realistically or efficiently review the
15 discovery in a searchable, usable format. Nor do they have the funds necessary to conduct a review
16 of the discovery for exculpatory material.

17 The parties and the Court discussed a number of deadlines in July that could be impacted
18 by the outstanding discovery and funding issues.

19 In light of the fact that the government had not yet undertaken possession of the sixty
20 Backpage servers located in Amsterdam, this Court indicated that it would be premature to adjust
21 Defendants' discovery deadlines and ordered the parties to provide the Court with a status report
22 on the state of discovery by June 1, 2019 to enable the Court to assess the need to adjust the
23 Defendants' upcoming deadlines.

24 Counsel for the government and the defense continue to meet and confer on these discovery
25 issues, and Defendants intend to provide the Court with a status report no later than June 1, 2019
26 as directed. However, Defendants have a discovery deadline that will occur *prior to* submission of
27 the June 1, 2019 status report. Under the current scheduling order, Defendants must produce all
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1 Rule 26.2 material as to their intended witnesses on or before May 27, 2019, though the current
2 order does not contemplate disclosure of Defendants' witness list until over one month later. (*See*
3 Scheduling Order, Doc. 131 at 2.) This deadline was mistakenly overlooked and therefore not
4 discussed at the recent status hearing when Defendants advised the Court of their anticipated
5 inability to meet many upcoming deadlines in the light of the grossly incomplete state of
6 discovery. Defendants will be unable to meet this deadline until the remaining discovery issues are
7 resolved. Accordingly, Defendants Michael Lacey, James Larkin, John Brunst, Scott Spear, Andrew
8 Padilla, and Joye Vaught, by and through their undersigned attorneys, respectfully request an
9 adjournment of their May 27, 2019 deadline until the parties submit their June 1, 2019 status reports
10 and this Court rules on Defendants' other outstanding deadlines.

11 Counsel for the government opposes this request.

12 RESPECTFULLY SUBMITTED this 21st day of May, 2019,

13 /s/ Paul J. Cambria, Jr.
14 LIPSITZ GREEN SCIME CAMBRIA LLP
15 Attorneys for Defendant Michael Lacey
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Pursuant to the District's Electronic Case Filing Administrative Policies and Procedures Manual (May 2018) § II (C) (3), Paul J. Cambria hereby attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized its filing.

s/ Thomas H. Bienert, Jr.
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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 United States of America,

11 Plaintiff,

12 v.

13 Michael Lacey, et al.,

14 Defendants.

No. 18-CR-00422-SMB

**[PROPOSED] ORDER GRANTING
DEFENDANTS' JOINT MOTION TO
ADJOURN DEFENDANTS' MAY 27, 2019
DEADLINE FOR RULE 26.2 MATERIALS**

15 Before the Court is Defendants' Motion to Adjourn Defendants' May 27, 2019 Deadline for
16 Rule 26.2 Material Pertaining to Witnesses.

17 For good cause appearing,

18 **IT IS ORDERED** that the otherwise applicable time for filing Defendants' Rule 26.2
19 Material Pertaining to Witnesses is adjourned to a time set by the Court upon consideration of
20 Defendants' forthcoming June 1, 2019 Status Report.

21 **IT IS FURTHER ORDERED** that excludable delay under 18 U.S.C. § 3161(h)(1)(D) will
22 occur as a result of the grant of this Order.

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24 DATED this ____ day of _____, 2019.

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Honorable Susan M. Brnovich
United States District Judge
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